IN THE COURT OF CIVIL APPEALS

STATE OF OKLAHOMA

DIVISION II

BOBBY GENE ALLEN, and
DEBORAH JANE ALLEN, on behalf of
themselves and all others similarly situated.

Plaintiffs/Appellees

Case No. 97,916

vs.

Not for Official Publication

AT&T Corporation,

Defendant./Appellant

OPINION ON REHEARING

AFFIRMED

Janet R. Varnell, Brian W. Warwick, VARNELL & WARWICK, P.A., The Villages, Florida, and Harry G. Scoufos, Thomas W. Condit, Fourth Scoufos, LAW OFFICES OF HARRY SCOUFOS, P.C., Sallisaw, Oklahoma, For Plaintiffs/Appellees

Kenneth N. McKinney, Jefferson I. Rust, MCKINNEY & STRINGER, P.C., Oklahoma City, Oklahoma, For Defendant/Appellant

OPINION ON REHEARING BY RONALD J. STUBBLEFIELD, JUDGE:

This is an appeal by defendant AT&T Corporation from an interlocutory trial court order certifying a class action lawsuit.1 On March 18, 2003, we issued an opinion affirming the lower court's judgment. However, we have granted rehearing to address an issue raised by Defendant. Based on additional review of the record on appeal, the issues raised by the parties, and applicable law, we affirm.

BACKGROUND

Plaintiffs, Bobby Gene Allen and Deborah Jane Allen, a married couple, are customers of AT&T, the telecommunications company. AT&T provides Plaintiffs with their long distance telephone service. Plaintiffs live in an unincorporated area outside the City of Muskogee.

Plaintiffs' lawsuit concerns the validity of a municipal sales tax charge included in their monthly long distance bill. Many cities, including Muskogee, require phone customers to

pay this tax, which is separate from the sales tax levied on telephone use by the state. For example, the State of Oklahoma levies a 4.5 percent state sales tax, and the City of Muskogee charges a 3.25 municipal sales tax. Because Plaintiffs live in an unincorporated area outside Muskogee, their long distance charges are subject to the state tax but not the municipal tax.

Plaintiffs asserted that AT&T charged the same municipal tax for all its customers residing in any one zip code, even those customers residing outside city limits. Plaintiffs produced one of their monthly AT&T bills, showing they had been charged the Muskogee municipal sales tax as well as the Oklahoma sales tax. Plaintiffs asserted AT&T was wrongfully collecting this money from nonresidents of any given city, remitting to the taxing authorities the amount properly owed, and pocketing the improperly charged amount "in order to enhance profits and reduce accounting costs." Plaintiffs acknowledged that after contacting AT&T about the problem, they received a one-month credit of 74 cents and were no longer being charged the tax.

Plaintiffs filed their petition, individually and as a class action, seeking damages for restitution, fraud,2 and breach of contract. Plaintiffs also sought declaratory relief and an injunction prohibiting AT&T from imposing the charge where unauthorized. AT&T denied charging a flat rate per zip code to its customers, admitting only that a previously-used computer software system had resulted in billing errors, including some related to whether a customer lived inside or outside a city's limits. AT&T asserted it had issued credits to customers who were improperly billed. AT&T filed a motion to dismiss, asserting that the Trial Court lacked jurisdiction because Plaintiffs did not seek a tax refund from the Oklahoma Tax Commission before filing their lawsuit. The Trial Court denied the motion. After receiving a good deal of evidence and conducting a hearing, the Trial Court issued a 27-page order granting class certification, with the class defined as:

> "All AT&T customers, residing in one of the following states, that were charged money as a city or a municipal tax on long distance services made from their service location where they did not reside within the incorporated boundaries of that city or municipal taxing jurisdiction:
>
> "Alaska, Arkansas, Arizona, California, Colorado, Florida, Iowa, Illinois, Kansas, Kentucky, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, West Virginia; Wyoming."3

AT&T appeals.

STANDARD OF REVIEW

In an appeal from a trial court's certification of a class action, our standard of review is whether the trial court abused its discretion. Shores v. First City Bank Corp., 1984 OK 67, 4, 689 P.2d 299, 301. Class actions are governed by 12 O.S. 2023 (2001), which specifies five prerequisites for class certification. The trial court abuses its discretion if the record

fails to support the conclusion that each of the five prerequisites of that statute is met. Id. Those prerequisites are set out and analyzed below.

DISCUSSION OF ISSUES

I. Jurisdiction

AT&T first argues, as it did below, that Plaintiffs' lawsuit should be dismissed for failure to exhaust administrative remedies. Plaintiffs did not seek a refund from the Oklahoma Tax Commission (OTC) for any amounts overpaid, and AT&T asserts that because OTC has exclusive jurisdiction over tax refunds, this case must be dismissed for lack of subject matter jurisdiction.

Oklahoma tax statutes do provide a procedure whereby taxpayers who have erroneously paid any tax can seek a refund from OTC and then, if unsuccessful, seek relief from the Oklahoma Supreme Court. However, a reading of the statutes does not reveal a limitation on pursuit of a remedy against a third party who collected some erroneous amount. Indeed, it would appear that claims such as are addressed in this lawsuit would be difficult if not impossible for an individual AT&T customer to pursue. For example, 68 O.S. 227(c) (2001) requires that a claim include specific information that an individual consumer likely would not have.

Some jurisdictions have addressed the alleged overcharge of sales, tax by companies providing telephone service and held that administrative remedies must be exhausted before judicial relief can be sought. The case of P.R. Mktg. Group, Inc. v. GTE Fla., Inc., 747 So. 2d 962 (Fla. Dist. Ct. App. 1999) involved a class action, and the court denied certification because individual consumers did not file an application for refund within a specific time. However, the P.R. Mktg. decision was based solely on a rule specified by the Florida Supreme Court.4 In Serna v. H.E. Butt Grocery Co., 21 S.W.3d 330 (Tex. Ct. App. 1999), the Texas Court of Appeals was faced with a case in which a grocery store admittedly overcharged sales tax to customers and then remitted the collected money, including the overage, to the State. The court held that under the Texas Tax Code a customer's exclusive remedy was to proceed through administrative channels. However, Serna did not deal with a class action claim, nor did it involve a claim for injunctive relief. Furthermore, a principal rationale in the Serna Court's decision was the possibility of numerous lawsuits and inconsistent verdicts, which is actually an argument in favor of class action.5

AT&T claims that the evidence is that it remitted all the monies that were claimed to be overcharges to the taxing authorities, and, therefore, Plaintiffs and every other individual customer must seek refund of the overpayment directly from those authorities. However, the record indicates that AT&T's corporate policy is to refund any overcharges directly to the individual consumer - in this instance they made a partial refund to Plaintiffs. And it seems certain that many, if not most of the customers of AT&T who may have been overcharged would not know that they had been wronged. Even those that did likely would not be able to prove individual claims before OTC or other taxing authorities

without access to AT&T records. Thus, the administrative remedies, which AT&T claims must be pursued, would likely present an insurmountable barrier to the individual customer seeking redress. In cases in which exhaustion of remedies is not required by statute, the requirement to exhaust administrative remedies is a prudential rule, rather than a jurisdictional bar. Waste Connections, Inc., v. Oklahoma Dept. of Environmental Quality, 2002 OK 94, 0, 61 Pad 219, 221. "Administrative remedies need not be exhausted if they would be ineffective, unavailable or futile to pursue." Id.

The question is one of jurisdiction. Did the Trial Court have jurisdiction to proceed even though Plaintiffs had not pursued an administrative remedy? Our preceding analysis leads us to conclude that the administrative remedy is effectively unavailable to these Plaintiffs as well as to the myriad of other potential plaintiffs. But an even more important reason for finding that the Trial Court had jurisdiction is that a primary purpose of Plaintiffs' cause is to obtain injunctive relief, as authorized under 12 O.S. 2023(B)(2) (2001), to prevent AT&T from continuing to use practices that have resulted in considerable overpayment by customers. The administrative remedy would do nothing to prevent AT&T from continuing to use procedures which resulted in overcharge of its customers and, thus, is insufficient as a remedy. We conclude, under the facts of this case, that the Trial Court had jurisdiction to hear Plaintiffs' lawsuit.

II. The Class Action

A. Prerequisites

Title 12 O.S. 2023 (2001) states as follows:

> "A. PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if:
>
> "1. The class is so numerous that joinder of all members is impracticable;
>
> "2. There are questions of law or fact common to the class;
>
> "3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> "4. The representative parties will fairly and adequately protect the interests of the class.
>
> "B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subsection A of this section are satisfied and in addition:
>
> "2. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

"3. The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

"a. the interest of members of the class in individually controlling the prosecution or defense of separate actions,

"b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class,

"c. the desirability or undesirability of concentrating the litigation of the claims in the particular form, and

"d. the difficulties likely to be encountered in the management of a class action."

AT&T asserts that none of the five prerequisites were met. B. Numerosity

Numerosity requires that the class be "so numerous that joinder of all members is impracticable." 12 O.S. 2023(A)(1) (2001). The Oklahoma Supreme Court has stated that this requirement is satisfied by numbers alone where the size of the class is in the hundreds. Black Hawk Oil Co. v. Exxon Corp., 1998 OK 70, 17, 969 P.2d 337, 343.

The Trial Court noted in its order that AT&T, through its responses to interrogatories and the testimony of its tax director, conceded that its former zip code system used to determine local taxes was inadequate, and that new software installed in the mid-1990's indicated over a million residential customers had been improperly billed for city taxes, resulting in overcharges of $5,000,000. The Trial Court accordingly found that this element was indisputably present and easily satisfied.

Certainly, the size of the proposed class meets the prerequisite of numerosity. In fact, AT&T does not argue that the sheer number of potential plaintiffs identified in the class does not meet this requirement. Instead, AT&T argues that the class has not been adequately defined, as numerosity requires. See, e.g., KMC Leasing, Inc. v. Rockwell-Standard Corp., 2000 OK 51, 15, 9 P.3d 683, 689. AT&T asserts that it will be difficult to identify class members, because individualized inquiries will have to be made to determine where calls originate and where customers reside.

In part, this argument is based on AT&T's "two out of three" method used to determine whether city sales tax applies. Under this method, as AT&T's tax director testified, the tax is due when two out of three factors in any call take place in a city limits: (1) the origination point (where the call is made); (2) the termination point (where the call is received); and (3) the service location, or service address (generally defined as the location of the telephone equipment from which a call is originated or, in the case of collect calls, received). AT&T asserts, for example, that when an out-of-city residential

customer uses a calling card from an in-city location, individualized customer records will have to be examined to determine if the tax is due.

We disagree with AT&T's argument for several reasons. First, as a practical matter, this appears to be no more a problem than in other consumer class actions, in which prospective members are identified through receipts, bills, or customer records. Given the detailed information provided in the AT&T bills submitted into the record, and AT&T's own detailed customer information system, we do not see this as a reason to defeat certification. The Trial Court's order, in fact, notes the testimony of the tax director to the effect that identification of class members could be accomplished using AT&T's existing information.

Second, the Trial Court's order appears to minimize some of the problems associated with identification. It limits the class to customers making long distance calls "from their service location," which would by definition be calls made from outside a city limits.

Third, the facts of the instant case are clearly different than those in KMC, upon which AT&T relies. KMC involved an action filed by purchasers of the Aero Commander aircraft. There, the Supreme Court concluded, "There is no single course of conduct by appellees alleged to have caused injury and it is impossible for claims to be based upon one legal theory as to all appellees." Id. at 16, 9 P.3d at 689. In contrast, Plaintiffs assert AT&T committed a single course of conduct that injured everyone in the class in the very same way. We conclude the record supports the finding of numerosity.

C. Commonality

Commonality requires that there are "questions of law or fact common to the class." 12 O.S. 2023(A)(2) (2001). There is little question that this requirement is satisfied. Each potential class member is a customer of AT&T; each resides outside a city limit; each has allegedly been wrongly billed for a municipal tax; and each has allegedly been damaged in an identical manner by identical acts committed by AT&T. Whether AT&T acted tortiously, and whether it is liable for its acts, are common questions. The Trial Court addressed this prerequisite in its order as follows:

> "As the Federal court noted in its order remanding this case, the crux of this case is whether individuals living in an unincorporated area outside of the limits of any city are subject to a charge by AT&T for a municipal sales tax on their phone bill. This is the one overwhelming central issue for all Class members."

According to AT&T, this requirement cannot be met because the Trial Court would be faced with a series of individualized questions regarding where each class member lived and how different states and local jurisdictions might treat the phrase "service location." We fail to see the logic of this argument. Determining whether a customer resides inside or outside the city limits is not a matter dependent on differing state laws. Also, the laws of the various states are similar in that it appears the city tax, wherever applied, never applies to anyone residing outside the city limits.6

Furthermore, an analysis of fairly recent cases supports the correctness of the Trial Court's decision regarding commonality. In Bunch v. K-MART Corp., 1995 OK CIV APP 41, 898 P.2d 170, the Court of Civil Appeals held that plaintiffs could not satisfy the commonality prerequisite as to common questions of fact (because each plaintiff would have to prove reliance) or of law (because different states had significant differences in their substantive law of fraud).

Bunch was subsequently distinguished by the Oklahoma Supreme Court in Black Hawk Oil Co. v. Exxon Corp., 1998 OK 70, 939 P.2d 337, which involved "clearly different and more uniform actions." Id. at 30, 939 P.2d at 345. In Black Hawk, the defendants allegedly failed to account for slop oil in monthly accountings rendered by them to a specific class of oil producers. The court quoted Newberg on Class Actions for the principle that "the need to show individual reliance has not precluded class treatment in cases where standardized written misrepresentations have been made to class members." Id.

Of course, the instant case does not involve a fraud theory. We mention Bunch and Black Hawk to contrast the differences among cases analyzing the commonality requirement. Certainly the facts of the instant case are closer to Black Hawk's facts. As in Black Hawk, the instant case involves standardized monthly accountings, in the form of AT&T monthly bills which either do or do not charge a customer a city tax.

Finally, there is evidence in the record indicating similarities among all the states as far as Plaintiffs' theories of restitution and breach of contract are concerned. We conclude the commonality prerequisite was satisfied. D. Typicality

Typicality requires that the claims or defenses of the representative parties be typical of the claims or defenses of the class. 12 O.S. 2023(A)(3) (2001). This requirement is satisfied "when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented . . . irrespective of varying fact patterns which underlie individual claims." Ammons v. Am. Family Mut. Ins. Co., 897 P.2d 860, 863 (Colo. Ct. App. 1995), quoting Newberg on Class Actions.

The Trial Court noted in its order that Plaintiffs are AT&T customers residing outside the municipal limits of a city who were billed for and paid a municipal tax. The order further noted that they asserted that AT&T was required to charge the correct amount of tax to all customers and to refund any improperly collected tax (retained by AT&T). The Trial Court concluded, "This core claim will be the same for all class members with an incorrect OCL Outside City Limits indicator."

We agree. Typicality focuses on the similarity of the legal and remedial theories behind the class members' claims. Lobo Exploration Co. v. Amoco Prod. Co., 1999 OK CIV APP 112, 17, 991 P.2d 1048, 1055. Plaintiffs' legal theories of recovery arise from allegations of the same course of conduct equally affecting Plaintiffs and the members of the putative class. These allegations form the basis of a common theme found in Plaintiffs' claims and render those claims typical of the class.

AT&T asserts the claims of Bobby Allen are not typical in that he has no relationship with AT&T. This argument appears to be based on the fact that Mr. Allen's name does not appear on the monthly bills, Plaintiffs receive from AT&T. The Trial Court dealt with this argument by correctly recognizing that Mr. Allen is married to co-plaintiff Deborah Allen, whose name does appear on the bill; that he is equally liable for the bills sent by AT&T; and that the evidence indicated AT&T treated him as an account holder.

AT&T also asserts that Deborah Allen's claims are not typical because, as a former AT&T employee, she received some discounts from the company. The Trial Court noted that the record did not indicate any discount affected whether Mrs. Allen was charged a municipal tax. We agree with the Trial Court's analysis.

AT&T further argues Plaintiffs' claims are not typical of the class because, following their complaint about paying municipal taxes, Plaintiffs received a credit and no longer are billed for the tax. However, it appears the credit was for one month only and there has been no showing that Plaintiffs received a credit for all months in which they paid the alleged improperly charged tax.

Finally, AT&T asserts that the tax laws of each state reveal variations in the limitations period regarding tax refunds, rendering the claims of these Oklahoma residents atypical. We find the argument without merit because, as reasoned above, this is not an action to obtain a state sales tax refund. However, if the Trial Court later determines unique defenses exist, it can use its power to modify its order as necessary: Shores v. First City Bank Corp., 1984 OK 67, 17, 689 P.2d 299, 304. We conclude the typicality prerequisite was satisfied. E. Adequacy of Representation

This prerequisite requires that the class representatives will fairly and adequately protect the interests of the class. 12 O.S. 2023(A)(4) (2001). Class representatives are required to have a "general understanding of their position as plaintiffs with respect to the cause of action and the alleged wrongdoing perpetrated against them by the defendants." Kalodner v. Michaels Stores, Inc., 172 F.R.D. 200, 209 (N.D. Tex. 1997).

Some of AT&T's arguments on this point are repetitive of earlier arguments we have considered and rejected. AT&T also asserts Plaintiffs will not be able to adequately represent the class because they lacked personal knowledge of their claims and abdicated their role to their attorneys.

As the Trial Court did, we reject this argument. At the core of this case are some basic assertions: Plaintiffs were billed for a tax; the tax is owed by residents of a municipality; Plaintiffs live outside the municipality. The Trial Court order indicates Plaintiffs understand the basic, consumer-oriented issues involved. Plaintiffs indicated they were able to identify the tax, calculate its amount, and complain to AT&T that they did not live within the taxable area. Contrary to AT&T's arguments there is no requirement that class representatives must have knowledge of the law governing telecommunication taxes or AT&T procedures. The record does not demonstrate that Plaintiffs lack personal

knowledge of the underlying circumstances of the lawsuit. To the contrary, it indicates they possess the required knowledge to satisfy this prerequisite.

F. Predominance and Superiority

As a prerequisite to a class action, predominance - found at 12 O.S. 2023(B)(3) - requires the trial court to examine whether individual questions preclude the common questions of law or fact from being predominant. Mattoon v. City of Norman, 1981 OK 92, 118, 633 P.2d 735, 739.

AT&T first asserts that individual questions of fact predominate because individual analysis is required of potential class members' bills. At this stage of the proceedings, however, the record indicates that AT&T's computer software will allow such an analysis. Moreover, to deny certification on this point would be tantamount to closing the courthouse doors to any claim that involved large numbers of consumers. One of the reasons behind the existence of class action lawsuits, after all, is to assure that plaintiffs with claims too small to pursue individually will receive their day in court. See Phillips Pet. Co. v. Shutts, 472 U.S. 797, 809, 105 S. Ct. 2965, 2973 (1985).

AT&T also asserts individual questions of law predominate because different tax rates will be involved, depending on what each state allows its cities to levy. We do not view this as justification for decertifying the class. AT&T does not assert that any jurisdiction allows the collection of a municipal tax from those customers who reside and make calls from their service location outside a city limits. And the question of what municipal taxes AT&T actually charged members of the class also seems likely to be determined from information in AT&T's computer database.

AT&T also asserts the Trial Court will be forced to survey all of the pertinent states' statutes of limitations to determine whether each putative class member's claims are timely under his or her applicable state's limitations period. However, the existence of individual statutes of limitations defenses is not a factor that generally finds favor with courts considering certification. Shores v. First City Bank Corp., 1984 OK 67, 16, 689 P.2d 299, 304. If a sufficient number of individualized issues emerge with respect to the limitations issue, the Trial Court has the option of modifying or even decertifying the class. At this stage of the proceedings, the limitations issue is not a sufficient ground for denying certification.

Title 12 O.S. 2023(B)(3) (2001) also requires the trial court to find that the class action is superior to other available methods for the fair and efficient adjudication of the controversy. AT&T argues that class treatment is not superior to other methods, primarily because the task of administering a case involving such a potential large number of members would overwhelm the resources of the Trial Court.

In determining the superiority of a class action, a trial court is required to balance the benefits the class action has over alternative methods of adjudicating the claims against the management problems which may arise from class treatment. Lobo Exploration Co. v.

Amoco Prod. Co., 1999 OK CIV APP 112, 15, 991 P.2d 1048, 1054. As the Trial Court did in the instant case, the Lobo trial court reasoned that each individual claim would be small (around one dollar a month for each plaintiff) relative to the costs of litigating the claim. The Court of Civil Appeals stated:

> "Therefore, individual litigation of their claims would be difficult or impossible for the members and would substantially increase the burden on the court system. The trial court concluded the litigation was more manageable as a class action than if undertaken individually, even though management problems would arise. We find no abuse of discretion in the trial court's action."

Id.

In its order, the Trial Court referred to Lobo and concluded, "Considering the extremely low amount of damages suffered by each individual class member, a class action is effectively the only way such a case could be successfully adjudicated." We find no fault with the Trial Court's reasoning.

G. Declaratory Relief

Title 12 O.S. 2023(B)(2) (2001) allows the class to seek injunctive relief, where the prerequisites of subsection A are satisfied and where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." AT&T asserts that if relief is appropriate, it is through money damages and not declaratory/injunctive relief.

According to the Trial Court, "the primary relief sought by Plaintiffs is to force AT&T to correct the problem so that customers like the Allens will not be overcharged in the future." The question of whether a court should grant declaratory relief goes to the appropriateness of that particular procedure or remedy for the particular controversy. Ethics Comm'n of State of Okla. v. Cullison, 1993 OK 37, 16, 850 P.2d 1069, 1073. In this instance, if Plaintiffs' claims are true and the conduct at the heart of the lawsuit is ongoing, then it may be appropriately addressed by declaratory relief. However, at this stage of the proceedings, it is simply too early to determine potential relief. Those are matters for the Trial Court to consider at the proper time and not here in the certification phase.

CONCLUSION

We hold that the Trial Court had jurisdiction over the matter, and did not abuse its discretion in certifying this case as a class action.

AFFIRMED.

TAYLOR, P.J., and GOODMAN, J. (sitting by designation), concur.

(FOOTNOTES):

1 Such an order is appealable by right pursuant to 12 O.S. 993(6) (2000).

2 Plaintiffs did not attempt to certify the fraud claim as part of the class action.

3 The Trial Court noted these 28 states are the only ones in the United States permitting cities to impose sales tax on long distance calls.

4 The Court in P.R. Mktg. actually pronounced a rather harsh judgment on its decision dictated by stare decisis, stating:

"We are compelled to take note of the resources that may be wasted as a result of this outcome. In a case where a tax refund may affect a significantly large number of individuals, it seems impractical to require every taxpayer to file a refund application with the DOR the taxing authority and be denied that refund before being able to join a class action. This may leave the DOR inundated with applications and would require it to spend a significant amount of time and resources on this unvaried type of claim. Alternatively, many customers may not know that the possibility of a tax refund may exist or may not even attempt to file for a refund since their personal claim may be a nominal amount. In that case, either GTE or the DOR may be able to realize a windfall by simply taxing each customer a mere one percent more than what they are legally allowed to do, if the appellants' allegations are indeed true, without anyone knowing of a possible refund nor requesting a refund. Regardless of the potential ramifications as it applies to this case, we must follow the supreme court's holding on this matter."

P.R. Mktg., 747 So. 2d at 965.

5 The Serna Court stated: "If H.E.B. had overcharged customers in several counties of this state, and the customers filed suit in their respective local district courts, the results from one trial court to another could be inconsistent. Such disparate outcomes would be unfair both to the aggrieved taxpayers as well as the state." Serna, 21 S.W. 3d at 334.

6 For these reasons, we cannot agree with AT&T that a conflict of law problem exists at this stage of the proceedings. Under general conflict of law principles, where the laws of two or more jurisdictions would produce the same result as to the particular issue presented, there is a "false conflict" and the court should avoid the choice of law question. Williams v. Stone, 109 F.3d 890, 893 (3rd Cir. 1997)

Citation: Unpublished Opinion No. 97,916 (2003)